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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160222132-6585-02]

RIN 0648-BF77

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Shrimp Fishery of the Gulf of Mexico; Amendment 17A**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 17A to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This final rule extends the current Gulf commercial shrimp permit moratorium for 10 more years. The intent of this final rule and Amendment 17A is to protect federally managed Gulf shrimp stocks while promoting catch efficiency, economic efficiency, and stability in the fishery.

DATES: This rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 17A, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/shrimp/2016/am17a/index.html.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305, or e-mail: Susan.Gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The shrimp fishery in the Gulf is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 5, 2016, NMFS published a notice of availability for Amendment 17A and requested public comment (81 FR 19547). On April 14, 2016, NMFS published a proposed rule for Amendment 17A and requested public comment (81 FR 22042). The proposed rule and Amendment 17A outline the rationale for the actions contained in this final rule. A summary of the action implemented by Amendment 17A and this final rule is provided below.

Management Measure Contained in this Final Rule

This final rule extends the Gulf shrimp Federal permit moratorium until October 26, 2026. Through Amendment 13 to the FMP, the Council established a 10-year moratorium on the issuance of new Federal commercial shrimp vessel permits (71 FR 56039, September 26, 2006). The moratorium on permits indirectly controls shrimping effort in Federal waters and thereby bycatch levels of juvenile red snapper and sea turtles. The final rule implementing the moratorium became effective October 26, 2006, and the moratorium permits became effective in March 2007. Extending the moratorium for an additional 10 years until October 26, 2026, is expected to maintain the biological, social, and economic benefits to the shrimp fishery achieved under the moratorium permit over the past 10 years.

Comments and Responses

NMFS received a total of 831 submissions from the public on Amendment 17A and the proposed rule. Of these submissions, 702 expressed general support for an extension of the permit moratorium. Some comments within the submissions addressed issues beyond the scope of Amendment 17A or the proposed rule, such as prohibiting shrimp trawling to reduce the impact on sea turtles and other marine life and modifying the requirements for turtle excluder devices and observers. From the submissions, NMFS has identified six issues related to Amendment 17A and the

proposed rule. These comments and NMFS' respective responses are summarized below.

Comment 1: Extending the permit moratorium would protect and expand gains in the shrimp fishery by limiting potential exploitation. Gulf shrimp landings have only slightly declined during the past 10 years and catch per day has increased.

Response: NMFS agrees that continuing the moratorium would constrain effort and protect economic gains from higher catch rates. Returning the fishery to open access could undo any positive effects of the moratorium.

Removing the moratorium would allow an unlimited number of new entrants into the commercial shrimp fishery and could have negative effects if the fishery then became overcapitalized. Overcapitalization or effort increases could lead to increases in sea turtle and red snapper bycatch and could result in additional requirements to reduce bycatch.

Before the moratorium was implemented, increasing fuel costs, decreasing shrimp prices, and increasing foreign shrimp imports were all contributing to the overcapitalization of the commercial shrimp fleet. Since implementation of the moratorium, the catch per unit effort for the offshore shrimp fishery increased and has remained relatively constant. Additional effort in the fishery could negate, or at least lessen,

profitability for the Gulf shrimp fleet as a whole.

Comment 2: There is no need for continuing the moratorium because of the decreasing number of valid permits over last 10 years.

Response: NMFS disagrees that the moratorium should be allowed to expire. The Council determined, and NMFS agrees, that extending the moratorium for an additional 10 years will continue stability for the fishery. As explained in the response to Comment 1, continuing the moratorium would constrain effort and protect economic gains from higher catch rates. The moratorium also indirectly controls effort and, therefore, bycatch levels of juvenile red snapper and sea turtles. Returning to an open access fishery would promote a return to less stable economic conditions.

Comment 3: Continuing the permit moratorium will help protect sea turtles and other marine life.

Response: NMFS agrees. In 2014, NMFS issued a biological opinion on the continued authorization of the Southeast U.S. shrimp fisheries in Federal waters on threatened and endangered species (including sea turtles) and designated critical habitat, in accordance with the Endangered Species Act (ESA). The sea turtle effects analyses and incidental take statement in the opinion were based on the expectation that future total effort

levels in the southeastern shrimp fisheries would remain at or below 2009 effort levels. An increase in shrimp effort greater than the 2009 level may require re-initiation of the Endangered Species Act consultation and further rulemaking to address any increased effects on sea turtles. Continuing the moratorium would cap effort and reduce the chance of exceeding the 2009 effort levels, thereby continuing to limit any adverse effects of the shrimp fishery on sea turtles and other marine life.

Comment 4: Gulf shrimp permit holders who have lost their moratorium permit due to non-renewal should be allowed to re-apply for a shrimp permit.

Response: NMFS disagrees. The purpose of the moratorium was to limit the number of permits available to fish for shrimp because the fishery was overcapitalized, as described in the response to Comment 1.

The Federal Gulf shrimp moratorium permit is renewable for up to 1 year from its date of expiration. NMFS sends a renewal letter and permit application to the permit holder 1 month prior to the permit's expiration date. After a year with no permit renewal, a permit is terminated and permanently removed from the permit pool. However, valid permits are fully transferable, which may allow someone who has lost a permit as a result of non-renewal to obtain a new permit.

Comment 5: As a result of the moratorium, the current market price of permits is too high.

Response: NMFS disagrees. Based on the best available information, the current average price of a moratorium permit is approximately \$5,000, and this price has been relatively constant since the moratorium was put in place. Thus, permits are not any more costly than they were 10 years ago, and in fact are likely less costly in real (inflation-adjusted) terms. Moreover, as previously noted, average profitability in the fishery has improved in recent years. An economically efficient business desiring to enter the fishery would be expected to recoup this cost relatively quickly and, thus, NMFS does not consider the cost of obtaining a permit to be onerous for businesses wanting to enter the fishery.

Comment 6: Permit holders who sub-lease shrimp moratorium permits should be required to forfeit the permits.

Response: NMFS disagrees. Although shrimp moratorium permits are fully transferable and a permit may be transferred to a vessel that is leased, there is no mechanism to sub-lease a permit through NMFS. To the extent the commenter is stating that the permits should not be transferable, economic efficiency is promoted when resources are allowed to shift to their most valuable use. The full transferability of permits is expected to

improve economic efficiency by allowing those who place the greatest economic value on these permits to buy them. Any restrictions on the transferability of permits would be expected to reduce economic efficiency in the fishery, contrary to the objectives of Amendment 17A and this final rule.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 17A, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from SBA's Office of Advocacy or the public on the certification in the proposed rule. NMFS received two comments regarding the economic analysis of Amendment 17A and the proposed rule. One comment suggested that

the current market price of moratorium permits is too high and the other comment stated that permit holders who sub-lease shrimp moratorium permits should be required to forfeit the permits. NMFS disagrees with these comments as explained in the responses to comments 5 and 6, above. The factual basis for the certification was published in the proposed rule and is repeated below.

The current moratorium on Gulf shrimp permits became effective on October 26, 2006 (71 FR 56039, September 26, 2006). This final rule extends the current moratorium on Federal Gulf shrimp permits until October 26, 2026. The purpose of this rule is to maintain the biological, social, and economic benefits to the Gulf shrimp fishery achieved under the current moratorium. The objectives of this rule are to protect federally managed Gulf shrimp stocks, and promote catch efficiency, economic efficiency, and stability in the Gulf shrimp fishery.

This final rule is expected to directly regulate businesses that possess Federal Gulf shrimp moratorium permits. As of September 21, 2015, there were 1,464 vessels with valid or renewable Gulf shrimp moratorium permits. Although some permits are thought to be held by businesses with the same or substantively the same individual owners, and thus would likely be considered affiliated, ownership data for Gulf shrimp permit

holders is incomplete and thus it is not currently feasible to accurately determine whether businesses that have these permits are in fact affiliated. NMFS is currently making changes to its permit application forms so that such determinations can be accurately made for future regulatory actions in this fishery. As a result of the incomplete ownership data, for purposes of this analysis, NMFS assumes each vessel is independently owned by a single business, which will result in an overestimate of the actual number of businesses directly regulated by this final rule. Thus, NMFS estimates the number of businesses directly regulated by this final rule to be 1,464.

Based on landings and economic data from 2013, which is the most current year for which complete economic data is available, all of these businesses are thought to be primarily engaged in shellfish harvesting activities (e.g., Gulf shrimp, South Atlantic shrimp, and Atlantic sea scallops fisheries). In 2013, the primary source of gross revenue for approximately 84 percent of these businesses was landings from one or more of these shellfish fisheries, while the other 16 percent did not have commercial landings in any fishery. A certain percentage of businesses with Gulf shrimp permits are usually inactive in the Gulf shrimp fishery in a given year, because of economic conditions in that fishery, other fisheries, or other industries

(e.g., oil and gas) in which these businesses, their owners, and their crew sometimes participate. Some businesses may have also been inactive due to issues associated with the Deepwater Horizon MC252 event in 2010, and subsequent payouts from British Petroleum (BP). NMFS only possesses data on such payouts and other transfer payments for a sample of the permitted businesses, and thus cannot confirm the extent to which such payouts contributed to the lack of commercial harvesting activity by all of the inactive businesses. Given the lack of data to the contrary and because these businesses possess Gulf shrimp moratorium permits, for the purpose of this analysis, these 1,464 businesses are assumed to be primarily engaged in commercial shellfish harvesting.

From 2011 through 2013, the greatest average annual gross revenue earned by a single business was approximately \$2.48 million. On average, a business with a Gulf shrimp moratorium permit had an annual gross revenue of approximately \$247,000, annual net revenue from operations (commercial fishing activities) of approximately \$6,300, and an annual economic profit of approximately \$37,000. All monetary estimates are in 2001 dollars. Average annual economic profit was greater between 2011 and 2013 compared to the 2006 through 2009 time period, and greater than net revenue from operations, partly because of non-

fishing related income, mostly in the form of payouts from BP (*i.e.*, transfer payments) due to the Deepwater Horizon MC252 event in 2010. Thus, although the average profit margin from 2011 through 2013 was nearly 15 percent of gross revenue, the average margin from operations was only about 2.6 percent. Though relatively small, this margin from operations is still greater than what these businesses earned between 2006 and 2009 when net revenue from operations was generally negative, on average.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the SBA's current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

Pursuant to the RFA, and prior to July 1, 2016, a certification was developed for this regulatory action using

SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are shellfish commercial fishing businesses and were considered small under the SBA's size standards, and thus they all would continue to be considered small under the new standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action.

Based on the information above, a reduction in profits for a substantial number of small entities is not expected. The Chief Counsel for Regulation of the Department of Commerce hereby reaffirms that the rule will not have a significant economic impact on a substantial number of small entities. Because this final rule, if implemented, is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This final rule will not establish any new reporting or record-keeping requirements.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf, Permits, Shrimp.

Dated: July 14, 2016

Samuel D. Rauch III,
Deputy Assistant for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.50, revise the introductory text of paragraph (b) to read as follows:

§ 622.50 Permits, permit moratorium, and endorsements.

* * * * *

(b) *Moratorium on commercial vessel permits for Gulf shrimp.* The provisions of this paragraph (b) are applicable through October 26, 2026.

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